Significant Index No.: 401.29-00

Internal Revenue Service

199939047

Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply to: OP:E:EP:T:3

Date:

JUL 7 1999

LEGEND:

Company A:

Business B:

Buyer C:

Plan X:

Dear

This letter is in response to a request for a ruling letter submitted on your behalf by your authorized representatives on May 25, 1999, concerning the tax consequences of certain distributions described in section 401(k) of the Internal Revenue Code ("Code").

Your authorized representatives have submitted the following facts and representations in support of the requested rulings:

Company A maintains Plan X, which is a profit sharing plan that contains a cash or deferred arrangement as described in Code section 401(k). Plan X is qualified under Code section 401(a).

Company A is engaged principally in the business of manufacturing railroad cars. It also repairs railroad cars at its general repair facilities. During the years 1996 through 1998, it was also engaged in the business of repairing coal cars. The coal car repair facilities and general repair facilities are located in different geographic areas. Its coal car repair business was conducted at nine coal car repair facilities, seven of which were sold to Buyer C, an unrelated corporation, in 1998. These seven facilities constituted 99 percent of the assets of Company A's coal car repair business.

Company A and other businesses in this industry consider coal car repair to be a business separate and distinct from general railroad car repair because of certain differences between coal cars and other types of railroad cars.

Company A operates each of its general repair facilities and coal car repair facilities as a separate business unit. Each facility has its own general manager who is responsible for the hiring and firing of employees at that facility. The employees of each facility provide services solely to that facility.

The payment of invoices related to each of Company A's business units is made through a centralized payment system. Although Company A prepares separate budgets and financial statements for each business unit, the profitability of the coal car repair business was monitored on a monthly basis and analyzed on a quarterly basis. An employee based at Company A's headquarters was responsible for generating sales solely for the coal car repair facilities.

Company A proposes to make lump sum distributions to those Plan X participants who became employees of Buyer C in connection with its acquisition of Company A's coal car repair business. Company A has continued to maintain Plan X after such acquisition. Buyer C will not in any manner maintain Plan X, become an employer whose employees accrue benefits under Plan X, or assume any liabilities or assets of Plan X.

Based on the foregoing facts and representations, your authorized representatives have requested the following rulings on your behalf:

1. That the disposition by Company A of the coal car repair facilities is the disposition of substantially all of the assets used by Company A in a trade or business within the meaning of Code section 401(k)(10)(A)(ii); and

2. That the distribution by Plan X of account balances of participants under Plan X attributable to Company A's contributions to participants who became employed by Buyer C will not violate the distribution restrictions set forth in Code section 401(k)(2)(B)(i).

Code section 401(a) provides that a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section if certain requirements are met.

Code section 401(k)(1) states in pertinent part that a profit sharing plan shall not be considered as not satisfying the requirements of subsection (a) merely because the plan includes a qualified cash or deferred arrangement.

Code section 401(k)(2) sets forth the requirements to be a qualified cash or deferred arrangement, one of which is that distributions may not be made earlier than the occurrence of certain stated events. Section 401(k)(2)(B)(i)(II), when read together with section 401(k)(10)(A)(ii), further provides that one of these distributable events is the disposition by a corporation of substantially all its assets (within the meaning of section 409(d)(2)) used by the

corporation in a trade or business of such corporation to an unrelated corporation, but only with respect to an employee who continues employment with the corporation acquiring such assets.

Section 1.401(k)-1(d)(4) of the Income Tax Regulations provides rules applicable to distributions upon the sale of assets. This regulation provides, in relevant part, that (i) the seller must maintain the plan, and the purchaser may not maintain the plan after the disposition; (ii) the employee receiving the distribution must continue employment with the purchaser of the assets; (iii) the distribution must be in connection with the disposition of the assets; and (iv) the sale of substantially all the assets used in a trade or business means the sale of at least 85 percent of the assets, and an unrelated entity is one that is not required to be aggregated with the seller under Code sections 414(b), (c), (m), or (o) after the sale or other disposition. Section 1.401(k)-1(d)(5) of the regulations provides, in pertinent part, that a distribution may be made only if it is a lump sum distribution within the meaning of section 402(d)(4) of the Code.

Your authorized representatives have represented that the coal car repair business is treated as a separate and distinct business from the other types of business conducted by Company A. The coal car repair business is comprised of repair facilities, each of which is operated as a separate business unit. Based on all the facts presented herein, we have determined that Business B is a trade or business as that term is used in Code section 401(k)(10)(A)(ii).

In this case, Company A sold to Buyer C, an unrelated entity, more than 85 percent of the assets used in its coal car repair business. Company A continues to maintain Plan X, and Buyer C does not maintain Plan X, after such sale. Distributions will be made in the form of lump sum distributions as described in Code section 402(d)(4).

Accordingly, with respect to your requested rulings, we rule as follows:

1. That the disposition by Company A of the coal car repair facilities is the disposition of substantially all of the assets used by Company A in a trade or business within the meaning of Code section 401(k)(10)(A)(ii); and

2. That the distribution by Plan X of account balances of participants under Plan X attributable to Company A's contributions to participants who became employed by Buyer C will not violate the distribution restrictions set forth in Code section 401(k)(2)(B)(i).

This ruling letter is based on the assumption that Plan X continues to be otherwise qualified under Code section 401(a) at all relevant times.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

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A copy of this ruling letter has been sent to your authorized representative in accordance with a power of attorney on file with this office.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Chief, Employee Plans
Technical Branch 3

Enclosures
Notice 437
Deleted copy of ruling letter

cc: